

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI G.S PANNU,A.M AND SHRI RAVISH SOOD,JM**

ITA(s) Nos. 706-708/Mum/2015 & ITA No. 75/Mum/2015  
(निर्धारण वर्ष / Assessment Year(s):2005-06 to 2007-08 & 2010-11)

Alpha Chemie Trade Agencies P. Ltd., Block H, Sadhashiv CHS Ltd., 6 <sup>th</sup> Road, Santacruz (E), Mumbai 400 055.	बनाम/ Vs.	DCIT, C.C 46, R.No. 659, 6 <sup>th</sup> Floor, Aaykar Bhawan, M.K Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN No.		AADCA9890L
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri. Mukesh Choksi, A.R.
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Rajesh Kumar Yadav, D.R.

सुनवाई की तारीख / Date of Hearing	:	13.03.2018
घोषणा की तारीख / Date of Pronouncement	:	21.03.2018

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present set of appeals filed by the assessee for A.Ys 2005-06 to 2007-08 and A.Y 2010-11 are directed against the consolidate order passed by the CIT(A)-38, Mumbai, dated 14.11.2014 for A.Y(s) 2005-06 to 2007-08 and his order dated 31.10.2014 for A.Y 2010-11, which in itself arises from the respective penalty orders passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), each dated 02.05.2013. That as common issues are

involved in the aforementioned appeals, therefore, the same are being taken up together and are being disposed off by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y 2005-06. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

*“1. The Learned Appellate Commissioner has erred in law and in facts in passing the order u/s 271(1)(c) of the Act.*

*2. The learned Appellate Commissioner has erred in law and in facts in passing the order without complying with the principles of natural justice.*

*3. The learned Appellate Commissioner has erred in law and in facts in levying penalty u/s 271(1)(c) of the Act at Rs. 3,12,000/-.*

*4. The appellant craves leave to add to, alter amend and/or delete in all the foregoing grounds of appeal.”*

2. Briefly stated, the facts of the case are that assessment in the case of the assessee was earlier framed under Sec. 143(3) r.w.s 153C on 24.11.2008, determining its income at Rs. Nil. That in the course of the Search and seizure proceedings conducted under Sec. 132 of the Income-tax Act, 1961 in the case of Mahasagar Group of companies (now known as Alag Securities Pvt. Ltd), M/s Mihir Agencies P. Ltd, M/s Alliance Intermediaries & Network P. Ltd and its group companies as well as the directors and auditor of the Mahasagar Group of companies on 25.11.2009 by the DDIT Unit-II(1), Mumbai, certain incriminating material pertaining to the assessee was found and seized. That a notice under Sec. 153C was issued, in compliance to which the assessee filed its return of income under Sec. 153C on 27.07.2011, declaring an income of Rs. Nil.

3. During the course of the assessment proceedings the A.O observed that the assessee and its group companies were purely engaged in the business of money laundering by providing

accommodation entries. The A.O observed that the Search and seizure proceedings conducted on the Mahasagar Group of companies on 25.11.2009 revealed more than 300 bank accounts pertaining to the aforesaid group concerns/entities with credits of Rs. 2,600 crores approximately spread over a span of six years, viz. F.Y 2002-03 to 2009-10. The A.O while framing the assessment deliberated at length on the *modus operandi* adopted by the aforesaid group entities/concerns for providing accommodation entries of varying nature, viz. (i). Speculation profit entries; (ii). Short term Capital gain/loss; (iii). Long Term Capital Gains; (iv). Commodity bills; (v). Derivatives Profits/loss; (vi). One time Entry/Share Application Money; (vii). Bogus Sales Invoices; and (viii) Bogus gifts. The A.O observed that Sh. Mukesh Choksi, director of the assessee company had in his statement recorded on oath under Sec. 132(4) admitted that he was through his group entities/associated concerns carrying on the business of providing accommodation entries. The A.O observed that a perusal of the seized material revealed various bank accounts of the assessee with total credits of Rs. 3,55,72,000/- for the year under consideration. The assessee on being called upon by the A.O to explain the nature and source of the amounts credited in its bank accounts reiterated the facts which were stated in the statement that was recorded under Sec. 132(4). The assessee on the basis of its claim that it was carrying on the business of providing accommodation entries, distanced itself from the amounts credited in its bank accounts and related the same to the beneficiaries to whom accommodation entries were provided by it. The assessee in the backdrop of its aforesaid claim submitted that it had received commission @ 0.15% for providing accommodation entries and placed on record a chart as per which its taxable commission income worked out to Rs. 10,672/-. That in order to buttress the aforesaid claim, the director of the

assessee company, viz. Sh. Mukesh Choksi placed on record a duly notarized affidavit, dated 28.11.2011, reiterating the facts as were narrated in his statement recorded under Sec. 132(4) and claimed that he and the group entities/associate concerns managed by him were carrying on the business of providing accommodation entries.

4. The A.O after deliberating on the contentions of the assessee in the backdrop of the facts available on record concluded that the search and post search investigations had clearly established that M/s Mahasagar Securities Pvt. Ltd and its associates were merely entry providers. The A.O observed that no genuine business was being carried on by any of the companies run by Sh. Mukesh Choksi and his associates and they were all engaged in the business of issuing bogus bills for providing Long Term Capital Gains/Loss, Speculation profit/loss, while for some of the companies were engaged in providing bogus share application money to other companies (in return for cash) and issuing bogus sale bills to various entities. The A.O was however persuaded to be in agreement with the claim of the assessee that the companies run by the Shri Mukesh Choksi were receiving commission income for providing accommodation entries. The A.O after necessary deliberations concluded that as commission @ 1.5% to 3.5% was being charged by the assessee for catering to the varying types of accommodation entries to the entry seekers, therefore, the net commission income of the assessee could be fairly estimated @2%. The A.O on the basis of his aforesaid observations worked out the commission income of the assessee for the year under consideration at Rs. 7,11,440/- (i.e 2% of the bank credits of Rs. 3,55,72,000/-). The A.O while culminating the assessment also initiated penalty proceedings under Sec. 271(1)(c) and issued a 'Show cause' notice (for short 'SCN'), dated 08.12.2011, calling upon the assessee to explain

that as to why penalty for furnishing of inaccurate particulars of income may not be imposed.

5. Aggrieved, the assessee carried the assessment framed by the A.O in appeal before the CIT(A). However, the CIT(A) not finding favour with the contentions of the assessee upheld the assessment and dismissed the appeal by his order dated 31.08.2012.

6. The A.O after the order was passed by the CIT(A) in the quantum appeal of the assessee issued another 'Show cause' notice under Sec. 271(1)(c), dated 09.01.2013. The explanation of the assessee that no penalty under Sec. 271(1)(c) was called for in its case, however, did not find favour with the A.O, who holding a conviction that the assessee had furnished inaccurate particulars of income within the meaning of Sec. 271(1)(c) and was a habitual defaulter, imposed a penalty of Rs. 3,12,000/- under Sec.271(1)(c).

7. Aggrieved, the assessee assailed the order of the A.O imposing penalty under Sec. 271(1)(c) in appeal before the CIT(A). The CIT(A) after deliberating on the facts of the case by a consolidate order dated. 14.11.2014 passed in 31 appeals in the case of the assessee and its group entities/associate concerns, dismissed the appeal of the assessee.

8. The assessee being aggrieved with the order of the CIT(A) upholding the penalty imposed by the A.O under Sec. 271(1)(c) had carried the matter in appeal before us. The ld. Authorised representative (for short 'A.R') for the assessee at the very outset taking us through the facts of case submitted that the assessee was engaged in the business of providing accommodation entries. It was submitted by the ld. A.R that a coordinate bench of the Tribunal, viz. ITAT, Mumbai Bench "A", while disposing off the quantum appeals of

the assessee, viz. M/s Alpha Chemie Trade Agencies Pvt. Ltd. Vs. DCIT, Central Circle 46, Mumbai for the year under consideration A.Ys 2004-05 to 2010-11 in ITA Nos. 6558 to 6564/Mum/2012, for A.Ys 2004-05 to 2010-11, after relying on the orders passed by the coordinate benches of the Tribunal in the case of the other group entities/associates, viz. M/s Goldstar Finvest Pvt. Ltd, M/s Mihir Agencies Pvt. Ltd, M/s Alliance Intermediaries and Network Pvt. Ltd and Mr. Mukesh Choksi, wherein it was concluded that the commission income was liable to worked out @0.15% instead of 2% applied by the A.O, had directed the A.O to recompute the commission income of the assessee from the business of providing accommodation entries in conformity with the aforesaid precedents. The ld. A.R further submitted that this bench of the Tribunal in the assesses appeal, i.e Alpha Chemie Trade Agencies Vs. DCIT, Central Circle-46, Mumbai, ITA No. 7563/Mum/2014, dated 09.09.2016 for A.Y 2009-10 (copy placed on record) and the coordinate bench of the Tribunal, viz. ITAT, "J" Bench, Mumbai in Alpha Chemie Trade Agencies Vs. DCIT, Central Circle-46, Mumbai, ITA Nos. 698 & 709/Mum/2015, dated 21.10.2016 for A.Y(s) 2004-05 and 2008-09 (copy placed on record), wherein same facts and issue were involved, had deleted the penalty imposed by the A.O under Sec. 271(1)(c). It was thus submitted by the ld. A.R that as the issue was squarely covered by the aforesaid orders of the Tribunal, therefore, the penalty imposed by the A.O in the hands of the assessee under Sec. 271(1)(c) could not be sustained and was liable to be vacated. Per contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities.

9. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have perused the orders of the Tribunal

passed in the assesses own case for A.Ys. 2004-05, 2008-09 and 2009-10. We find that the facts and the issue involved in the case of the assessee for the year under consideration remains the same as were involved in the aforementioned years. We may herein observe that the similarity in the facts and the issue involved in the case of the assessee for the year under consideration, viz. A.Y 2005-06 and that of the aforesaid years, viz. A.Ys 2004-05, 2008-09 and 2009-10 can safely be gathered from the very fact that the CIT(A) had vide his consolidate order, dated 14.11.2014 for all the years under consideration dismissed the appeals of the assessee against the respective orders passed under Sec. 271(1)(c) for the said years. We further find that even the Tribunal vide its common order, dated 09.09.2016, viz. M/s Alpha Chemie Trade Agencies Pvt. Ltd. Vs. DCIT, Central Circle 46, Mumbai, had disposed off the quantum appeals of the assessee for the A.Ys 2004-05 to 2010-11 in ITA Nos. 6558 to 6564/Mum/2012. We find that this bench of the Tribunal, viz. ITAT "A" while disposing off the appeal of the assessee for A.Y 2009-10 and deleting the penalty imposed by the A.O under Sec. 271(1)(c) had vide its order dated 09.09.2016, passed in Alpha Chemie Trade Agencies Vs. DCIT, Central Circle-46, Mumbai, ITA No. 7563/Mum/2014, dated 09.09.2016, observed as under:

*"6. We have carefully considered the rival submissions. It is abundantly clear that modus operandi and the nature of income earned by the assessee, which has been subjected to the penal provisions of Sec. 271(1)(c) of the Act in the instant case, are similar to those considered by the Co-ordinate Bench in the case of Mihir Agencies Pvt. Ltd., & Mr. Mukesh Choksi (supra). It is also abundantly clear that in the present case also the variation in the quantum of income assessable between assessee and the revenue is on account of estimation only an identical situation which has been considered in the aforesaid precedents. Therefore, following the aforesaid precedent, which have been rendered in similar circumstances, we hereby set-aside the order of the CIT(A) and direct the Assessing Officer to delete the penalty imposed under Sec. 271(1)(c) of the Act. Thus, on this aspect, assessee succeeds."*

We are of the considered view that as the facts and the issue involved in the case of the assessee for the year under consideration, viz. A.Y. 2005-06 remains the same as against those involved in its case for A.Y 2009-10, therefore, finding ourselves persuaded to be in agreement with the view earlier taken by the Tribunal while disposing off the appeal of the assessee for A.Y 2009-10, subscribe to the same and delete the penalty of Rs. 3,12,000/- imposed on the assessee under Sec. 271(1)(c). The appeal filed by the assessee is allowed and the order of the CIT(A) sustaining the penalty of Rs. 3,12,000/- imposed by the A.O under Sec. 271(1)(c) is set aside.

10. In the result, appeal of the assessee for A.Y 2005-06 is allowed.

11. It was a common point between the parties that the facts and circumstances in ITA Nos. 706-708/Mum/2015 & ITA No. 75/Mum/2015, for Assessment Years 2006-07, 2007-08 & 2010-11 were *pari materia* to those considered by us in ITA No. 705/Mum/2015 for Assessment Year 2005-06, thus, our decision therein shall apply *mutatis mutandis* in these appeals also.

12. In the result, all the appeals of the assessee are allowed, as above.

Order pronounced in the open court on 21/03/2018.

Sd/-

(G.S PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 21.03.2018

Ps. Rohit Kumar

Sd/-

(RAVISH SOOD)

JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,  
Mumbai**